IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.3104 OF 2006
IN
CRIMINAL APPEAL NO. OF 2006

The State of Maharashtra ..Applicant

Versus

Faruq Rafiq Sayyed & 3 ors. ..Respondents

Mr.K.V.Saste APP for the State.

Mr.B.D.Joshi for the respondents.

Coram : J.N.Patel &
R.S.Mohite,JJ

Date : 11.01.2007.

PC

1. This is an application seeking leave to appeal to challenge the acquittal of the co-accused by the Vth Ad-hoc Additional Sessions Judge, Nashik on 28.3.2006 in Sessions Case No.148 of 2004 wherein they were tried alongwith principal accused i.e. Asif for having committed offences under Sections 363, 366 r/w 34 of IPC.

2. It is the prosecution case that one Parveen aged 15 years, daughter of Smt.Nasim and Salim Bagwan was kidnapped from her house between the night of 19.3.2004 and 20.3.2004 on which a father Salim lodged a missing report in Bhadrakali police station on 20.3.2004. On this, it was revealed

that original accused no.1 Asif was also missing from his house and probably kidnapped Parveen on the allurement that he would marry her. Police thereafter registered offence against the accused, investigate the case and found that accused Asif had taken the girl away to Hyderabad and stayed with his relatives who are co-accused in this case. The trial Court found that the prosecution has proved that it was only the original accused Asif who has committed the offence under Sections 363, 366 and 376 of IPC whereas acquitted all the other co-accused in that case. Against the impugned judgment and order, the State has preferred an appeal seeking leave of this Court.

2. The learned APP submitted that in the course of investigation complicity of the respondents original accused nos.2 to 5 has been made out and therefore, the trial Court ought to have convicted them rather than allowing them to go scotfree without any justification though prosecution has proved that Asif alongwith the kidnapped girl had stayed at their places and they were instrumental in her kidnapping.

3. We have gone through the evidence and the findings recorded in the judgment by the trial Court and we find that the view taken by the trial Court cannot be said to be perverse. The trial

Court was justified in holding that the respondents cannot be held guilty for offences under Sections 363 and 366 of IPC as Kum.Parveen probably left the parents' house on her own due to the allurement given by original accused no.1 Asif. Therefore, this is not a fit case in which interference in the finding arrived at by the trial Court is required. Therefore, we are not inclined to grant leave. Application stands rejected. As a consequence of which, the appeal stands dismissed.

(J.N.Patel,J)

(R.S.Mohite,J)